

United States Courts  
Southern District of Texas  
FILED

OCT 17 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

Nathan Ochsner, Clerk of Court

Gaia Herbs, Inc.,	)	Civil Action No. 3:22-cv-352
	)	
Plaintiff, Counter-Defendant	)	
	)	
v.	)	
Gaea Hempworks, LLC,	)	
	)	
Defendant, Counterclaimant	)	
_____	)	

**MOTION TO DISMISS WITH PREJUDICE**

NOW COMES GAEA HEMPWORKS, LLC, Defendant and Counterclaimant, this their  
Motion to Dismiss and would respectfully show unto the Court the following:

**I.**

**INTRODUCTION**

Defendant moves for dismissal on the grounds that the Plaintiff is operating its  
business(es) unlawfully, under the Federal FDAC, the Lanham Act, as well as violating U.S.  
Patent and Trademark Regulations.

**II.**

**FACTS**

Plaintiff claims that Defendant has infringed on its registered trademarks and  
subsequently is losing profits due to similarity of products between the parties. Defendant denies  
these claims, stating that both parties market under different avenues due to the nature of each

one's products – Plaintiff sells dietary and herbal supplements and Defendant sells purely cannabinoid (CBD) products.

### **III.**

#### **PLAINTIFF ACTING UNLAWFULLY UNDER ITS TRADEMARKS**

Plaintiff violates the Federal Food Drug and Cosmetics Act under section 201(ff)(3)(B) of the FD&C Act [21 U.S.C. §321 (ff)(3)(B)] by adding cannabinoid (CBD) oils to its dietary supplements. Further, per the Trademark Manual of Examining Procedure (TMEP) §907 Plaintiff violating the U.S. Patent and Trademark Office regulations by marketing its hemp products under its federally registered dietary and herbal supplements trademarks. Lastly, Plaintiff has acted under the “unclean hands” doctrine of the 15 U.S.C. §1125, et seq. (“Lanham Act”) by engaging in the improper conduct regarding the subject matter of the cause of action to pursue the claim at issue. The “unclean hands” doctrine applies to equitable claims cases. Under the elements that determining the validity of “unclean hands”, Plaintiff is engaging in conduct involving fraud, deceit of the public, bad faith towards the public face, amongst others. In light of Plaintiff's conduct, Plaintiff should not be permitted any remedy against Defendant in equity.

WHEREFORE, PREMISES CONSIDERED, Defendant, Gaea Hempworks, LLC, prays that this Court grants our Motion to Dismiss with Prejudice dismissing Plaintiff's causes of action against it and award Defendant its fees and costs, including attorney fees, reasonably incurred in connection to this matter, and any damages that the Court deems justified and reasonable.

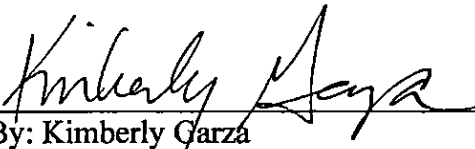
## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the 17<sup>th</sup> day of October 2022 by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

Mr. David Le Blanc  
Greer, Herz & Adams, L.L.P.  
2525 South Shore Boulevard  
Suite 203  
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Respectfully submitted,

Gaea Hempworks, LLC



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PRO SE REPRESENTATIVE FOR DEFENDANT